November 11, 2020

The Honorable Dustin Burrows
Chairman, House Ways & Means Committee
Texas Capitol E2.722
Austin, Texas

Chair Burrows, Members of the Ways & Means Committee:

Perhaps the most important interim activity undertaken by House Ways & Means is that found in interim charge #1: *Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following: SB #2, which is the Texas Property Tax Reform and Transparency Act of 2019. Monitor the implementation of the legislation, including a review of the tax rates adopted by taxing units in 2019 and 2020, the appraisal review board survey system, and progress in onboarding the tax rate notices and websites. Make recommendations for modifications as necessary and appropriate.*

A more efficient appraisal process for the state of Texas would increase the overall productivity of the state's economy by reducing the need for countless appeals and costly litigation. A good and fair process enables taxpayers to focus on their business and for governments to efficiently use and allocate resources. SB 2 is a key component in that effort, and we commend the Legislature for those efforts. However, it seems your work is never done.

The low-income housing tax credit program (LIHTC) administered by the Texas Department of Housing and Community Affairs provides a federal income tax credit that generates private equity investment for the construction of affordable housing developments. In addition to the equity provided by the tax credit subsidy, housing developers typically borrow funds to pay for the construction. That debt, and the costs associated with maintaining and operating an LIHTC development, are paid by the rents charged to tenants. Federal law limits those rents so that households do not pay more than 30 percent of their income for rent and utilities. Over the past 10 years allowable rents for LIHTC developments have increased, on average, by one percent annually while expenses (e.g., utilities, insurance, and maintenance) have increased substantially.

Because LIHTC developments have a limited rental income stream, appraisal districts appraise them on the basis of that revenue. This requirement ensures that an LIHTC development's property tax burden does not outpace federally imposed rent restrictions. Interested parties observe that despite the requirement to appraise developments on the basis of their income, appraisal districts have varied in their application of this appraisal method. In some cases, appraisal districts unilaterally increased all appraisal values by 10 percent, including those for LIHTC developments. In other instances, appraisal districts increased developments' appraised value as the actual rental income for those properties declined. These significant appraisal increases have prompted the owners of LIHTC properties to protest and litigate their valuations, a costly and time consuming exercise.

The property tax appraisal process for LIHTC developments requires greater clarity, certainty, and guidance. SB 2 does not specifically address this and the protections and guidance within that legislation will provide some relief but still does not address the underlying problem of Appraisal districts using market-based approaches for LIHTC projects that are income limited.

This committee has adopted reasonable provisions, agreed to by all stakeholders, providing clarity and specificity for appraisal districts' evaluation of LIHTC developments last session (HB 2993 – Geren). However, the Senate was not able to pass that bill. The stakeholder language establishes a procedure for appraising developments that links the annual change in a property's valuation to the annual change in income. The consensus language further ensures that LIHTC developments under construction, and not producing rental income, receive appraisals on the basis of their anticipated income and expenses for the first year of operation. These changes would provide clearer, specific direction for appraisal districts' valuation of LIHTC developments, better ensuring appropriate appraisals that reflect a given project's income.

Summary:
President Regan created the Low-Income Housing Tax Credit program and both political parties and all levels of government recognize the overall benefit for a community of quality housing for all income levels. However, there is one division of government via its legitimate mandate that often is at odds with the economic and policy goals of the rest with regard to affordable housing.

Appraisal districts are charged with maximizing property tax revenue and collections for our governmental bodies that rely on that revenue. Often in that zeal to generate revenue, they neglect other policy goals and at times, good appraisal practices, especially where LIHTC properties are concerned. Often this leads to time consuming litigation that drives up the cost of affordable housing that we have collectively set as a worthy policy goal for our state.

For these reasons, I encourage the Ways & Means Committee to address these issues with the Texas Comptroller's office to clarify the appropriate appraisal techniques needed for these projects and take the necessary steps to correct any outstanding issues in the 87th Legislature.

Warm regards,

John Kroll
Partner